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TRANSCRIPT OF PROCEEDINGS

NOV 3 - 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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IN THE MATTER OF:

CC DOCKET NO. 93-161

CLARK-BADER, INC., d/b/a)
TMC LONG DISTANCE,)
Complainant,)
V.)
PACIFIC BELL,)
Defendant.)

DATE OF SESSION: September 30, 1993
PLACE OF SESSION: Washington, D. C.

VOLUME: 2
PAGES: 58-336

FREE STATE REPORTING, INC.
Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

NOV 3 - 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the matter of:

CLARK-BADER, INC., d/b/a
TMC LONG DISTANCE,

Complainant,

V.

PACIFIC BELL,

Defendant.

CC Docket No. 93-161

The above-entitled matter came on for an Admissions Session pursuant to Notice before Judge Walter Miller, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., 20554, in Courtroom No. 4, on Thursday, September 30, 1993, at 8:30 a.m.

APPEARANCES:

On behalf of Clark-Bader, Inc., d/b/a TMC Long Distance:

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1 On behalf of Pacific Bell:

2 NANCY C. WOOLF, Esquire
3 Raymond F. Churchill, Esquire
4 140 New Montgomery, Room 1523
San Francisco, California 94105

5 On behalf of FCC Common Carrier Bureau:

6 THOMAS D. WYATT, Esquire
7 Chief, Formal Complaints
FCC Common Carrier Bureau

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I N D E X

E X H I B I T S

	Identified	Received	Rejected
<u>TMC Long Distance</u>			
TMC Exhibit No. 1	68	159	
TMC Exhibit No. 2	161	183	
TMC Exhibit No. 3	185		196
TMC Exhibit No. 4	197	201	
TMC Exhibit No. 5	202	204	
TMC Exhibit No. 6	205	278	
TMC Exhibit No. 7	278	281	
TMC Exhibit No. 8	283	284	
TMC Exhibit No. 9	288	289	
TMC Exhibit No. 10	290		
TMC Exhibit No. 11	300	303	
TMC Exhibit No. 12	304		
TMC Exhibit No. 13	316	317	
TMC Exhibit No. 14	318	319	
TMC Exhibit No. 15	320	323	
TMC Exhibit No. 16	323	324	
TMC Exhibit No. 17	325	326	
TMC Exhibit No. 18	326	327	
TMC Exhibit No. 19	328		331
TMC Exhibit No. 20	332	335	

Session Began: 8:30 a.m.

Session Ended: 5:30 p.m.

Lunch Began: 12:00 p.m.

Lunch Ended: 1:05 p.m.

FREE STATE REPORTING, INC.

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P R O C E E D I N G S

(8:30 a.m.)

1 JUDGE MILLER: This is the date for the Evidentiary
2 Admissions Session in the TMC/Pacific Bell 208 proceeding,
3 Common Carrier Docket 93-161. We're here today to formally
4 identify and offer the exhibits you exchanged back on
5 September 21, 1993, and I'm going to rule on any objections to
6 all or part of those exhibits. And after the exhibit proffers
7 have been completed, we will go into witness notification.
8
9 Before we get started, let's take some appearances
10 for Clark-Bader.
11 MR. HELEIN: Charles H. Helein on behalf of Clark-
12 Bader.
13 MR. WAYS DORF: And Richard Waysdorf on behalf of
14 Clark-Bader.
15 JUDGE MILLER: All right. For Pacific Bell?
16 MS. WOOLF: Nancy Woolf.
17 MR. CHURCHILL: And Raymond Churchill.
18 JUDGE MILLER: For the Acting Chief, Common Carrier
19 Bureau?
20 MR. WYATT: Thomas Wyatt.
21 JUDGE MILLER: All right. Before I ask you if you
22 have any preliminary matters, I'll bring one preliminary
23 matter up. Today there will be released two orders: FCC
24 93M-626 and 93-- FCC 93M-628. And in those two orders I
25 dismiss the Motion for the Imposition of Sanctions and I deny

1 the Motion for Acceptance of a Reply. And that -- the impact
2 of those two orders means that this case remains in a reason-
3 able settlement position. The Motion for the Imposition of
4 Sanctions, as far as my analysis was concerned, had character
5 overtones. But with the denial, a dismissal of that motion,
6 then neither Party to this proceeding on this record has their
7 character in doubt, and so the case is settle-- in settlement
8 position. In other words, I am not being placed in a position
9 as -- at this moment of having to approve a settlement which
10 might benefit an alleged wrongdoing. I make that point on
11 these two orders because I don't want to be misconstrued.

12 When Mr. Helein asked me would I accept a settle-
13 ment, a courthouse-step settlement, I indicated I would, but
14 I, I assumed at that time that would be a settlement that
15 would not offend the public interest and, therefore, I could,
16 could grant it. And my position remains the same. It hasn't
17 changed.

18 All right. Before we get down to the business at
19 hand, are there any preliminary matters you wish to bring up,
20 Mr. Helein?

21 MR. WAYSDORF: Your Honor, I think I am going to
22 carry the ball here.

23 JUDGE MILLER: Oh.

24 MR. WAYSDORF: We have -- I have a number of matters
25 relating to some questions, Your Honor, I'd ask as far as

1 service of subpoenas and, and common witnesses and things like
2 that.

3 JUDGE MILLER: You mean mate-- materials I went over
4 with, with Julia Waysdorf?

5 MR. WAYSDORF: Correct.

6 JUDGE MILLER: On, on the telephone?

7 MR. WAYSDORF: Yes, and there are some questions --

8 JUDGE MILLER: Well, I've been in touch with both
9 parties and, and having gone over their -- having gone -- I
10 don't mean that I read them. I, I don't, I don't need to
11 study these things anymore, Mr. Waysdorf, you know. I've been
12 out of that business for some years. But I did go over them
13 to try to prepare us for today's -- to ma-- make our, our
14 session, our Evidentiary Admissions Session smoother. So, why
15 don't you just -- and when we come to those exhibits which I
16 mentioned, you can, you can make a statement at that t-- make
17 a statement at that time.

18 MR. WAYSDORF: Right. The, the only, really, other,
19 other thing was service of subpoenas, which really doesn't
20 implicate specific exhibits.

21 JUDGE MILLER: Service of subpoenas is a -- is
22 really an ex-Party matter. I have no -- I have signed, I have
23 signed the last three subpoenas that you brought into me
24 yesterday. And when we get to those particular individuals,
25 it might be wise for you to make a statement.

1 MR. WAYSDORF: Okay.

2 JUDGE MILLER: You know -- you understand what I'm
3 saying?

4 MR. WAYSDORF: Yes, I do now. Yes, I do.

5 JUDGE MILLER: All right. Anything -- any other
6 preliminary matters, Mr. Waysdorf?

7 MR. WAYSDORF: No, Your Honor.

8 JUDGE MILLER: Ms. Woolf?

9 MS. WOOLF: I have prepared, as you requested a re--
10 revision to our submission which contains pagination on each
11 page and I've already forwarded a copy to Mr. Helein and would
12 be happy to give you yours now.

13 JUDGE MILLER: Okay. And did -- and, and -- is --
14 are the copies that you will be giving to the court reporter
15 today paginated?

16 MS. WOOLF: The copies that I have with me are
17 paginated, yes.

18 JUDGE MILLER: If, if you remember at the last
19 session, I said -- the -- advice is: saving two copies to
20 give to the court reporter. That -- and I, I, I'm responsible
21 for those, and you say those do have -- are paginated?

22 MS. WOOLF: I, I do not have two extra copies with
23 me. I thought that was on -- for November 1st I needed those
24 two copies.

25 JUDGE MILLER: You need them -- you're going to have

1 to give two copies to the reporter today.

2 MS. WOOLF: Hmm.

3 JUDGE MILLER: Well, now, let, let me say, in all
4 fairness, you've got, you've got a little bit of time because
5 Mr. Waysdorf goes first. But I would get -- I would set about
6 getting those copies and getting them paginated, because when
7 your turn comes I'm going to ask you to give two copies to the
8 court reporter.

9 MS. WOOLF: Okay.

10 JUDGE MILLER: And as -- one -- as well as one to
11 me.

12 MS. WOOLF: That's fine.

13 JUDGE MILLER: And Mr. Wyatt.

14 MR. WYATT: Your Honor, if I, if I may interject, do
15 you have a copy for the Bureau today?

16 MS. WOOLF: I will.

17 MR. WYATT: Well, ma-- I was going to suggest that,
18 that the Bureau could -- I mean, if you had, if you had a copy
19 for, for the Bureau, you could give that to the --

20 JUDGE MILLER: Well --

21 MR. WYATT: We, we could, we could certainly --

22 JUDGE MILLER: Let's, let --

23 MR. WAYSDORF: Well, one of those copies was sup-
24 posed to be the signed originals of the declaration.

25 JUDGE MILLER: Now, I want, I want not only you to

1 have a copy -- to have a copy, me to have a copy, and two
2 copies to the reporter. That's what, that's what -- that's --
3 and make arrangements to start to comply with that. You have
4 some time.

5 MS. WOOLF: Yes.

6 JUDGE MILLER: Okay? Any other preliminary matters,
7 Ms. Woolf?

8 MS. WOOLF: No.

9 JUDGE MILLER: All right. Mr. Waysdorf, let's,
10 let's get started. The record will reflect that Mr.
11 Waysdorf's got a bundle of --

12 MR. WAYSDORF: I've got one set of, of originals and
13 one copy, two copies, therefore, for the court reporter of the
14 exhibits of Clark-Bader, Inc., d/b/a TMC Long Distance.

15 JUDGE MILLER: And now -- and if -- and that's four
16 volumes, is that correct?

17 MR. WAYSDORF: Yes.

18 JUDGE MILLER: Two sets --

19 MR. WAYSDORF: Two sets of four volumes each.

20 JUDGE MILLER: All right.

21 MR. WAYSDORF: And it consists of 72 exhibits which
22 will go through with an individual --

23 JUDGE MILLER: One --

24 MR. WAYSDORF: One by one.

25 JUDGE MILLER: One by one.

1 MR. WAYSDORF: Let me note, Your Honor, that there
2 are a few items that were changed or corrected at the request
3 of either Your Honor or Ms. Woolf in the last week. The set
4 that -- the sets that have been delivered to the court report-
5 er contain those corrections and we have previously tendered
6 to Your Honor and Ms. Woolf a few of -- most of those. There
7 are a couple that were discovered in the last couple days
8 which I have for distribution to Your Honor and the Parties --

9 JUDGE MILLER: All right. Now, let --

10 MR. WAYSDORF: -- today.

11 JUDGE MILLER: -- let -- and I think the record
12 should reflect that those, those changes that Ms. Woolf and
13 myself made were, were procedural type changes. There, there
14 were -- the --

15 MR. WAYSDORF: --

16 JUDGE MILLER: -- no change of any, any testimony.

17 MR. WAYSDORF: Correct, Your Honor. It's a matter
18 of pagination or --

19 JUDGE MILLER: Right.

20 MR. WAYSDORF: -- or repetitive pages or items of
21 that sort.

22 JUDGE MILLER: All right.

23 MR. WAYSDORF: And we'll deal with those as we go
24 along, I would --

25 JUDGE MILLER: Right.

1 MR. WAYSDORF: -- I would assume.

2 JUDGE MILLER: Very good.

3 MR. WAYSDORF: With that having been said, Your
4 Honor, would you like me to move to Exhibit No. 1?

5 JUDGE MILLER: That's exactly what I want you to do.

6 MR. WAYSDORF: I'd like marked for identification
7 TMC Exhibit 1, which consists of a 48-page statement, testi-
8 mony of Stephen L. Bader, President, CEO, Clark-Bader, Inc.,
9 d/b/a TMC Long Distance.

10 JUDGE MILLER: All right. And that's in Volume 1?

11 MR. WAYSDORF: Yes, Your Honor. We're starting with
12 Volume 1. Volume 1 will go through Exhibit 13.

13 JUDGE MILLER: And TMC Exhibit 1 is a 48-page docu-
14 ment, Mr. Waysdorf?

15 MR. WAYSDORF: Yes, Your Honor.

16 JUDGE MILLER: Including the declaration?

17 MR. WAYSDORF: Including the declaration page.
18 That's right.

19 JUDGE MILLER: All right. And the document that
20 you've just described, the testimony of Stephen L. Bader, 48
21 pages including the declaration, will be marked for identifi-
22 cation as TMC Exhibit No. 1.

23 (Whereupon, the document
24 referred to as TMC Exhibit No. 1
25 was marked for identification.)

1 JUDGE MILLER: And do you move that into evidence?

2 MR. WAYS DORF: Yes, Your Honor. I do request that
3 it be accepted into evidence.

4 JUDGE MILLER: Ms. Woolf, do you have any -- Ms.
5 Woolf, do you have any objections to TMC Exhibit No. 1?

6 MS. WOOLF: Yes.

7 JUDGE MILLER: All right. Proceed.

8 MS. WOOLF: I have a number of specific objections
9 to specific things in this testimony. I have a, a general
10 objection I'll make initially, which is on the statute of
11 limitations. Under Section 415 of the Act there is a two-year
12 statute of limitations and we believe, therefore, that since
13 this Complaint was filed February 27, 1989, that any matters
14 prior to February 27, 1987, are barred by the statute of limi-
15 tations and I ask that things dealing with that time period
16 prior to 1987 not be admissible.

17 JUDGE MILLER: All right. Your objection is over-
18 ruled, although it's good that you put, put it on the record
19 at this juncture. If I -- if, if my, my instruction wasn't
20 clear the last time, I, I believe, based on my reading of the
21 Designation Order, that the period from 1985 to 1988 is, is a
22 re-- is a relevant period. Now, that doesn't mean that I'm
23 going to give damages based upon 1985 to 1988, but it does
24 mean that anything that -- as, as a, as a predicate for what
25 occurred later on, that, that occurred in 1985 and 1986 is

1 | admissible. All right. Your general objection is overruled.

2 | MS. WOOLF: Okay. Then I'd like to move to my
3 | specific objections.

4 | JUDGE MILLER: Proceed.

5 | MS. WOOLF: Page 3.

6 | JUDGE MILLER: All right. Before you get to page

7 | 3 --

8 | MS. WOOLF: Yes?

9 | JUDGE MILLER: Mr. Wyatt?

10 | MR. WYATT: Yes, sir?

11 | JUDGE MILLER: You and I had a little conversation
12 | at the, at the last meeting, if you remember that conversation
13 | about what kind of jurisdiction I had over this -- over TMC
14 | Long Distance in the event that we did have a Request for
15 | Character Issues against them, and I made the point, perhaps
16 | mistakenly, but I made the point that we didn't have jurisdic-
17 | tion, the -- only the California Public Utilities Commission
18 | has jurisdiction. Do you remember that conversation?

19 | MR. WYATT: I do, Your Honor.

20 | JUDGE MILLER: Now, on the first page of TMC Exhibit
21 | 1, I see in the second paragraph TMC is certified by the CPUC
22 | and also, also holds a Certificate of Public Convenience and
23 | Necessity from the Federal Communications Commission pursuant
24 | to Section 214 of the Communications Act of 1934. TMC has
25 | filed tariffs for its long distance service with the CPUC and

1 the FCC. Does this mean that they have submitted themselves
2 to your -- to our jurisdiction?

3 MR. WYATT: Your Honor, the Bureau take the position
4 that, that they -- that the Commission's jurisdiction relative
5 to this was established even before the, the submission of
6 this exhibit. I think this clearly states, states that --

7 JUDGE MILLER: No. No, I mean, at the time they
8 filed for the -- to -- they, they got a 214 from us. They
9 asked us for a 214 and we gave it to them. Did we establish
10 by voluntarily submitting to our juris-- were they voluntarily
11 submitting to our jurisdiction? That's my question.

12 MR. WYATT: Well, Your Honor, I, I, I -- I, I, I --
13 the reason I'm hesitating somewhat, because I -- it, it, it is
14 the Bureau's position that, that there's no question of juris-
15 diction, where -- in the -- where -- the provision to inter-
16 state services, they, they function as a -- as, as a reseller.
17 The Commission has made it clear in numerous decisions that
18 it, it retains jurisdiction over such carriers, notwithstand-
19 ing some of the, the regu-- the regulatory actions that have
20 been taken. Now, perhaps in answer to your question directly,
21 I, I would, I would say yes. This -- I'm, I'm not aware of
22 this particular Section 214 certificate that's, that's alluded
23 to in, in this particular exhibit.

24 JUDGE MILLER: Do you know what the tariff number
25 is?

1 MR. WYATT: No, I do not, Your Honor. But I suppose
2 that's something that we could --

3 JUDGE MILLER: Well, that, that can be brought out.
4 But --

5 MR. WYATT: I, I suppose -- not know-- or not having
6 seen the certificate, because my, my question would, would be
7 well -- what -- this is in reference to the blanket 214 autho-
8 rity that the Commission conveys on, on nondominant carriers
9 such as TMC.

10 JUDGE MILLER: Well, I'm not, I'm not questioning
11 the, the, the admissibility of this -- these sentences. I
12 would just -- I -- but I, I felt obligated on this record to,
13 to, to, to tie it back in to our previous conversation.

14 MR. WYATT: Yes, Your Honor. And the Bureau's
15 position is that there, there's -- there -- the, the
16 Commission clearly has jurisdiction. These -- this reference
17 to the certificate of, of, of this Convenience and Necessity
18 bears that out and, and so does the fact of the tariff filing
19 bear that out.

20 JUDGE MILLER: Well, see -- Ms. Woolf, what was your
21 specific objection?

22 MS. WOOLF: On page 3, lines 14 to 25, I believe
23 there's no foundation for that testimony. Mr. Bader is here
24 talking about what AT&T received and there's no foundation
25 that he has any personal knowledge of what AT&T received or

1 | how they received it.

2 | MR. WAYSORF: Your Honor?

3 | JUDGE MILLER: Mr., Mr. Waysdorf?

4 | MR. WAYSORF: Your Honor, I believe that's based on
5 | Commission records and Commission precedent that Feature Group
6 | C was what AT&T had from the 1950s, at least until 1988, and
7 | it -- this is something that, if need be, official notice
8 | could be taken of, of this, of this item.

9 | JUDGE MILLER: I'll overrule your objection, Ms.
10 | Woolf.

11 | MS. WOOLF: I'd like to make a specific objection in
12 | line 20 to the statement: F-- "Feature Group C is a superior
13 | form of access." I don't believe that there is any foundation
14 | for that statement and that characterization is, is not pro-
15 | per.

16 | MR. WAYSORF: Your, Your Honor, this is a matter
17 | that he explains in the exact same sentence.

18 | JUDGE MILLER: No, he doesn't. It's not -- in the
19 | next sentence.

20 | MR. WAYSORF: In the next sentence.

21 | JUDGE MILLER: Pardon me?

22 | MR. WAYSORF: Yeah. I mean --

23 | JUDGE MILLER: Under, under FGC Access.

24 | MR. WAYSORF: Yeah.

25 | JUDGE MILLER: All right. The -- your objection is

1 overruled, but I will -- I'm, I'm going to -- is look at that
2 sentence in the terms of the, the sentence that follows,
3 namely, that he, he -- the -- his, his -- the superior form
4 means that you only need to dial one number, 1, and then you
5 dial the seven digits, as opposed to what he later describes
6 in his testimony as being a 23-number approach. And that's
7 the way it'll be approached. That's the way it'll be
8 interpreted.

9 MS. WOOLF: Okay. Thank you.

10 JUDGE MILLER: All right.

11 MS. WOOLF: Page 5.

12 JUDGE MILLER: All right.

13 MS. WOOLF: The bottom of the page, line 24, 25,
14 continuing on to the next page.

15 JUDGE MILLER: Starting with the words, "It was..."

16 MS. WOOLF: Yes.

17 JUDGE MILLER: "...and is..."

18 MS. WOOLF: I believe there's no foundation for that
19 and it's all speculation.

20 MR. WAYSDORF: Your Honor, this is, this is really
21 just setting a context. It's a background of how this --
22 essentially this service originated as a result of the, the
23 end of --

24 JUDGE MILLER: Well, the point, the point is is
25 there any basis in this exhibit for, for his understanding and

1 belief? I mean, is there something tangible that we can look
2 at and say, oh, all right, yes. AT&T did continue to receive
3 FGC access via CS6 until the first quarter of 1988. Is there
4 anything that will tell us that, Mr. Waysdorf? I'm -- in
5 other words, I want, I want to see something tangible upon
6 which he bases his understanding. Is there, is there such
7 information in this exhibit or in the record?

8 MR. WAYSDORF: Your Honor, I --

9 JUDGE MILLER: In, in exhibits that you have not yet
10 identified and introduced?

11 MR. WAYSDORF: Your Honor, I believe there is evi-
12 dence to support this in other Parties' testimony -- I mean,
13 other witnesses' testimony, including our expert witness, Mr.
14 Ritchey. This is also, again --

15 JUDGE MILLER: Let me ask you this, this question,
16 Mr. Waysdorf. During the, during the investigation at the, at
17 the -- on the Bureau, Bureau level, did anybody look at the
18 records as to what AT&T was receiving --

19 MR. WAYSDORF: Your Honor, I --

20 JUDGE MILLER: -- in 1985 through the first quarter
21 of 1988?

22 MR. WAYSDORF: Your Honor, I believe so, and I
23 believe it was Mr. Ritchey himself who reviewed those records.

24 JUDGE MILLER: Mr. Ritchey?

25 MR. WAYSDORF: Yes. Yes. Jim -- James Ritchey,

1 whose testimony is contained in TMC Exhibit 6, who we are
2 propounding as our expert on telecommunications network
3 structure.

4 JUDGE MILLER: All right. I'll accept that repre-
5 sentation, Ms. Woolf, and if, if it develops that it is not,
6 then it'll be up to you to make a Motion to Strike.

7 MS. WOOLF: Okay. Because it is certainly our
8 belief that while Mr. Ritchey may mention it in his testimony,
9 we intend to object to that on the same basis when we get to
10 his testimony.

11 JUDGE MILLER: I want to see something, I want to
12 see something tangible that says, you know, I've looked at --
13 I've been, I've been going into Pac Bell records and this is
14 what the Pac Bell records show. Or here is a sheet or here is
15 a, a page taken from the Pac Bell records that says that they
16 continued to receive this material.

17 MS. WOOLF: Judge --

18 JUDGE MILLER: Or a Pac Bell admission. Whatever.
19 I mean, something, something I can put in my, put in m-- put
20 my hands on if -- when I write a decision. Are you following
21 me, Mr. Waysdorf?

22 MR. WAYSDORF: Yes. Your Honor, I think there's
23 also a Commission rulemaking, TDX rulemaking, I don't have the
24 cite for you right now, that made a finding that, that AT&T
25 had Feature Group C access through 1988.

1 JUDGE MILLER: You -- the -- dig it up and give it
2 to me.

3 MR. WAYSORF: We will.

4 JUDGE MILLER: Something that, that's tangible.
5 That's all I -- that's what I need. Proceed, Ms. Woolf.

6 MS. WOOLF: Page 6, the bottom of the page. "Many
7 of our customers demanded that TMC provide them with
8 dialers..." It goes on to the next page to about line 7.
9 That's all hearsay based on what the customer said.

10 JUDGE MILLER: Well, I'm -- I don't have, I don't
11 have -- let me say this. In -- I'll read this to you so we --
12 you'll understand where I'm coming from. "Any rigid rule
13 about hearsay is unsuited to the varied inquiries conducted by
14 Administrative agencies. Hearsay should be admitted if it
15 appears reliable and is not otherwise improper. It should be
16 admitted in the nature of the information and the state of the
17 particular record to persuade the judge that it is useful."
18 In other words, if this is the kind of hearsay that prudent
19 businessmen use in their conduct of their affairs, I'm willing
20 to accept it. Now, if it's the type of hearsay that, that I
21 should not rely on, that it's un-- that it's unreliable, then
22 I would be willing to sustain the objection. Is it your
23 position that this is unreliable here?

24 MS. WOOLF: There is no evidence for this. So, I
25 just don't know whether it's reliable or not.

1 JUDGE MILLER: Mr. Waysdorf?

2 MR. WAYSDORF: Your Honor, I don't think that rises
3 to the level of establishing it's unreliable. We have records
4 -- I'm not sure we've submitted it, but we have records of
5 number of dialers being ordered in response to these requests.
6 I think we will be having -- again, that goes also to the
7 weight. And we'll be having Mr. Bader on the stand, and I'm
8 sure he's going to be questioned about the specifics of this
9 statement and then a judgment could be made as to weight and
10 reliability of it.

11 JUDGE MILLER: I'm, I'm afraid that's not good
12 enough, Mr. Waysdorf. I don't want to be placed in a position
13 of having to say rely vaguely on words like "many customers"
14 in, in determining (a) either liability or (b) damages. I, I
15 have to know specific -- what we're talking about. And if
16 "many" is two, if "many" is six, I, I need to know it. I'll
17 sustain your objection to that material, Ms. Woolf.

18 MS. WOOLF: Okay. Also -- I'm sorry.

19 MR. WAYSDORF: If I may have a clarification. Is
20 that line from the middle of line 24 to the middle of line 7?

21 JUDGE MILLER: The problem, the problem is that will
22 we have a complete sentence if we, if we break it off right
23 after the word "Complaint" on line 24, Ms. Woolf?

24 MS. WOOLF: It doesn't seem like it, does it?

25 JUDGE MILLER: I'm going to -- I'll sustain the

1 objection to starting on line -- put a period after the word
2 "available" on line 22, Mr. Waysdorf.

3 MR. WAYSORF: Okay, Your Honor.

4 JUDGE MILLER: And I -- then a-- even after "TMC was
5 converted" through the top -- the second line on page, page 7
6 with the word "1986".

7 MS. WOOLF: My, my objection had gone all the way
8 down to line 7. It --

9 JUDGE MILLER: I'm sorry.

10 MS. WOOLF: -- it included the next --

11 JUDGE MILLER: You're right.

12 MS. WOOLF: -- sentence.

13 JUDGE MILLER: Down to line 7 these -- where they
14 say "these customers". That's sustained. Now, that -- I'll
15 admit that lines 21 and 22 as, as skewered make an awkward
16 sentence, but I think it's still admissible to stay that "the
17 use of dialers is no longer necessary once equal access is
18 available." All right.

19 MS. WOOLF: Ready?

20 JUDGE MILLER: Yeah.

21 MS. WOOLF: Okay. Page 7, line 11. "Once we rea-
22 lize that timely corrective action by Pacific Bell was not
23 forthcoming, TMC in many instances..." and continuing through
24 the end of line 16. That contains many characterizations.
25 Again, words like "many instances," "timely corrective

1 action," "damage to our reputation as a provider," "high
2 quality efficient long distance services." There's no,
3 there's no foundation. It contains characterizations that I
4 believe are, are improper for testimony.

5 JUDGE MILLER: All right. Mr. Waysdorf?

6 MR. WAYSDORF: Well, I'm not sure what --

7 JUDGE MILLER: Same position, same position,
8 general-- generally, as we've -- we had with the last one?

9 MR. WAYSDORF: Well, except that I'm not sure exact-
10 ly which specifics she's objecting to. I believe that these,
11 in some cases -- the realization that timely corrective ac-
12 tions by people is not forthcoming is the witness's percep-
13 tion, and in that sense is, is fully, is fully admissible. As
14 far as accedi-- acceded to demands of its customers, again,
15 he's stating --

16 JUDGE MILLER: Well, here, here --

17 MR. WAYSDORF: -- that -- what he --

18 JUDGE MILLER: Let me, let me --

19 MR. WAYSDORF: -- the action that it is.

20 JUDGE MILLER: This is, this is, this is a conclu-
21 sion. I have no objection to Mr. Bader's stating a
22 conclusion, but I, I, I, I find nothing to support that con-
23 clusion, and it is in fact one of the disputed, disputed ele-
24 ments of the case, Mr. Waysdorf, whether he should have or-
25 dered service based on the tariff or whether he had a right to

1 wait, wait and let the PB account team dictate what he, what
2 he was to do. He, he seems to be taking the position that
3 Bell was under an obligation to tell her the direct trunking
4 was available, et cetera.

5 MR. WAYS DORF: I believe that, that is --

6 JUDGE MILLER: And, and the tariff is going to have
7 to speak for itself on that point. And I'm probably going to
8 want to look at it, but I'm, I'm -- I don't, I don't see any
9 basis for this conclusion.

10 MR. WAYS DORF: Well, Your Honor, some of the basis
11 is, is, as, as, the preface to this sentence begins, is that
12 it's detailed below in his testimony. This is -- we're still,
13 I know, we're on page 7, but we're still on the, you know,
14 kind of the background and, and preface to the rest of his
15 testimony, which goes on for another 40 pages. I think on
16 pages 8 and 9 he goes into in more detail --

17 JUDGE MILLER: All right. I'll overrule --

18 MR. WAYS DORF: -- exactly --

19 JUDGE MILLER: -- I'll overrule the objection on a
20 -- on, on the theory -- on the -- on your representation that
21 this is backed by substantive facts later on in this exhibit,
22 or I'll even give you a break and say other exhibits in this
23 case. This -- because I, I, I -- I'll be frank with you. I
24 have looked at -- I haven't studied it in detail, but I have
25 looked at the deposition of the man he met down in New Orleans